

PUBLIC NOTICE

June 21, 2011

Hamilton County Circuit and Superior Courts Proposed Local Court Rule Change

The Judges of the Hamilton County Circuit and Superior Courts find good cause to deviate from the schedule for amending local court rules pursuant to Trial Rule 81(D), and request Supreme Court approval of the proposed amendments.

The following proposed additions, amendments and/or deletions to the Hamilton County Local Court Rules are posted for public comment:

LR29-PR00-711 FEES OF ATTORNEYS AND FIDUCIARY (Amended)

The above rule is on separate pages and deletions are shown by ~~striking~~ and new text is shown by **bold underlining**.

Comments will be received until July 21, 2011, and should be sent to one of the following addresses:

Administrator of the Courts
Hamilton County Courts
One Hamilton County Square, Suite 313
Noblesville, IN 46060-2232

E-Mail: orval.schierholz@hamiltoncounty.in.gov

Following a review of the public comments, the Hamilton County courts will adopt, modify, or reject the proposed local rule change by July 22, 2010.

If approved, the effective date for this rule will be August 1, 2011 or sooner.

LR29-PR00-711. FEES OF ATTORNEYS AND FIDUCIARY

711.10 No fees for fiduciaries or attorneys shall be paid out of any supervised estate or guardianship without prior written order of the Court.

711.20 All orders for fees in estates shall provide that said fees are to be paid only after approval of the Final Accounting except the Court may, in its sole discretion, if all paperwork has been properly filed, award partial attorney or fiduciary fees when the Indiana Inheritance Schedule is filed or the Federal Estate Tax Return is filed.

711.30 A guardian or guardian's attorney may petition for fees at the time of filing an inventory. Other than as provided hereafter, no further petition for fees may be filed until a biennial, annual, or final accounting has been filed. When unusual items of substantial work occur during the proceedings, the Court may consider a petition to allow fees for such services.

711.40 No attorney or fiduciary fees will be determined and authorized for payment by the Court in any unsupervised administration of a decedent's estate.

711.50 Where contracts for legal services have been entered into prior or subsequent to the opening of an estate or guardianship, the Court reserves the right to approve or disapprove the fee contracts consistent with this court's fee guidelines.

711.60 All petitions for fees for the attorney and/or fiduciary shall conform to the fee guidelines **for fees enumerated in 711.70 below** ~~set forth by this Court~~ and shall specifically set forth all services performed in detail as well as the amount of the fee requested and how it has been calculated (~~Form PR00-7~~).

711.70 Pursuant to relevant statute, if a testator does not provide for compensation of the personal representative and/or the attorney performing services for the estate, the Court may award "just and reasonable" fees. In determining a "just and reasonable" amount of fees, the Court may consider several factors, including: the labor performed, the nature of the estate, difficulties in recovering assets or locating devisees, and the peculiar qualifications of the administrator and/or attorney. Additionally, for attorneys, the Court may consider the guidelines for determining legal fees as set forth in Rule 1.5 of the Indiana Rules of Professional Conduct. In all fee determinations, the key factor considered by the Court will be that the fees are reasonably commensurate to the time and work involved.

711.780 Unjustified delays in carrying out duties by the fiduciary and/or attorney will result in a reduction of fees.

711.890 Attorney fees for representing a minor in settlement of a claim for personal injuries are subject to court approval. If the entire attorney fee is to be paid at the same time a structured settlement is approved, the amount of the fee must be based on the present value of the settlement.